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ABSTRACT

This report revisits several key questions examined in a 1999 report, "Title I Midstream: The Fight to Improve Schools for Poor Kids," investigating whether all states have: set standards for student performance; measured attainment of standards with assessments that meet Title I requirements; and developed accountability systems required by law. The report concludes that federal oversight improved during the last 18 months of the Clinton Administration, as the Department of Education provided more guidance to states and began to demand that states comply with important federal requirements and safeguards for Title I assessments. It also concludes that, with a few exceptions, the states are still far behind in establishing systems that will provide tangible benefits to children. Although states had 6 years to develop the six assessments called for under the 1994 law, by January 2001, only 11 states fully met important Title I requirements for alignment with standards, technical quality, full inclusion of all students, and disaggregation of results by race, gender, and other categories. There is no evidence that the Bush Administration is moving the process forward. Instead, the assessment-compliance process begun under the previous administration has been halted. (SM)

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CLOSING THE DEAL

A Preliminary Report on State Compliance
With Final Assessment & Accountability Requirements
Under the Improving America's Schools Act of 1994

CITIZENS' COMMISSION ON CIVIL RIGHTS

March 1, 2001

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Foreword

The Citizens' Commission on Civil Rights is a bipartisan organization established in 1982 to monitor the civil rights policies and practices of the federal government and to seek ways to accelerate progress in the area of civil rights.

This report is one component of the Citizens' Commission on Civil Rights' Title I monitoring project, which is examining whether and how recently enacted federal reforms put into place through the reauthorization of Title I of the Elementary and Secondary Education Act of 1965 are being implemented in high-poverty schools. Previous Citizens' Commission reports on Title I implementation include: *Title I in Midstream: The Fight to Improve Schools for Poor Kids* (1999) and *Title I in Alabama: The Struggle to Meet Basic Needs* (1999).

The Commission gratefully acknowledges the support of the John D. and Catherine T. MacArthur Foundation, the Spencer Foundation, and the Ford Foundation for this study.

EXECUTIVE SUMMARY

While the President and members of Congress engage in lofty rhetoric about high standards, strong accountability and "leaving no child behind," the devil remains in the details – in this case the details of implementation of the 1994 amendments to Title I of the Elementary and Secondary Education Act.

This school year marks the end of a six-year phase-in of the major institutional changes required by the 1994 law – the adoption by the 50 states of high standards, fair and inclusive assessments, and accountability systems designed to hold educators responsible for student progress. The final deadline by which all states were to have implemented these measures is upon us – the 2000-01 school year.

As the Citizens' Commission reported in its 1999 study, *Title I in Midstream: The Fight to Improve Schools for Poor Kids*, the Clinton Administration until 1998 was lax in holding the State to their responsibilities. As we now report in *Closing the Deal*, federal oversight improved during the last 18 months of the Clinton Administration, as the Department of Education provided more guidance to states and began to demand that states comply with important federal requirements and safeguards for Title I assessments.

But, as we also report, with a few exceptions, the states are still far behind in establishing systems that will provide tangible benefits to children. Although states had six years to develop the six assessments called for under the 1994 law, by January 2001, only eleven states fully met important Title I requirements for alignment with standards, technical quality, full inclusion of all students, and disaggregation of results by race, gender and other categories. For example:

* *California, West Virginia, Wisconsin*, and other states rely on norm-referenced tests that are not matched to the state's standards

* *Texas* failed to include half its disabled students in its assessment system, prompting the Department of Education's determination that the "rate of exclusion is excessive."

* *Nevada* excluded 58% and *North Carolina and Wisconsin* each excluded at least 40% of their students with limited English proficiency from state assessments.

* *California* excluded over 900,000 students from its accountability system, including many students with limited English proficiency and those attending charter schools and small schools, and others.

Moreover, there is no evidence yet that the Bush Administration is seizing the reins to move the process forward. To the contrary, the assessment-compliance process begun under the previous administration has been halted, and no steps have been taken, to the Citizens' Commission's knowledge, to review state's final accountability plans. The Citizens' Commission challenges the Bush administration to move forward promptly and vigorously to secure compliance with the 1994 law. Otherwise, its proposals for new reforms may be an empty promise for many children.

INTRODUCTION

"A deal is a deal. Every state that took Title I money starting in 1995 committed to implement [standards, assessment, and accountability systems.] My responsibility is to help them do that and to hold them accountable for doing that...

These are the requirements that come along with taking federal money."[1]

Michael Cohen, Former Assistant Secretary for Elementary and Secondary Education

In 1994, Congress made a deal with state and local education officials. It offered to provide "greater decision-making authority and flexibility to schools and teachers in exchange for greater responsibility for student performance."[2] It delegated to states major new responsibilities to develop standards, aligned assessment and accountability systems to ensure that all students, but especially disadvantaged students, made real academic progress. Now, over five years after the deal was made, Congress is poised to rewrite the rules for Title I, its largest educational assistance program for elementary and secondary schools. Once again, it is time to assess the extent to which the parties fulfilled their ends of the bargain – a bargain that was struck for one overriding purpose: to provide an equal opportunity for all students to obtain a quality education.[3]

In this report, the Citizens' Commission revisits several of the key questions it examined in its 1999 report, *Title I in Midstream: the Fight to Improve Schools for Poor Kids*, including:

- Have all states set standards for student performance?

- Are all states measuring attainment of the standards with assessments that meet Title I requirements for:
  - Alignment with the standards?
  - Inclusion of students with disabilities?
  - Inclusion of students with limited English proficiency?
  - Disaggregation of assessment results?

- Have all states developed the accountability systems called for in the law, including:
  - A definition of "adequate yearly progress?"
  - Help and support for low-performing schools?
  - Corrective action for persistently low-performing schools?

The answer to all of the above *should* be an unqualified "yes." This is because the Title I statute, and accompanying regulations and guidance issued by the Department of Education, (the Department) specify that all these steps were to be taken by states before or by this current (2000-01) school year.

[1] "'A Deal is a Deal' says Assistant Secretary Cohen; New ED Official to Continue Accountability Agenda," Title I Monitor, February 2000, p.3.

[2] Improving Americas Schools Act, Pub. L. 103-382, Title I, Sec. 101, Oct. 20, 1994, 108 Stat. 3519 (codified at 20 U.S.C. Sec. 6301(d)(9).

[3] 20 U.S.C. Sec. 6301(a)(1).

Congress allowed states a generous "transition" period within which to fully develop, test and implement the standards-based system. This period has now expired. *Title I in Midstream* evaluated state compliance and federal enforcement midway through the process of implementing the reforms. This report provides an update on how states have met their ultimate responsibilities. It also evaluates the important role of the Department in seeing to it that states adhere to major terms and conditions of the aid – provisions that are essential to ensure that poor and minority children have real opportunities to learn and are not left behind.

The stakes are higher now than they were during the period 1997-99 when the Commission last reviewed state plans for compliance and found most of them deficient. A new Congress and Administration are debating competing proposals for Title I reauthorization and competing visions of the federal role in education. In the judgment of the Commission, though, parents and students have been asked to wait far too long for better schools. It is now up to each set of actors in this complex drama to take responsibility and to act with a sense of urgency to see that real education reform takes hold in our nation's poorest schools.

First and foremost, the states should muster the political will to do what is right for poor and minority youngsters by implementing the 1994 reforms and providing sufficient resources to poor schools to enable students to meet high standards.

The new Administration should not let another day slip by without aggressively enforcing provisions in current law designed to ensure no child is left behind. These include provisions for fair and inclusive final assessments that should have been in place last October, and accountability systems, which all states should have in place by this spring.

Finally, the Congress should ratify the principles of standards-based reform contained in the 1994 amendments to Title I of the Elementary and Secondary Education Act by reauthorizing the Act for at least five more years. Congress should take additional steps to improve the capacity of high-poverty schools and school districts, including targeting additional resources, improving accountability for poor and minority students, and taking bold steps to address growing problems of teacher quality.

The Improving America's Schools Act of 1994

The Title I program is the federal government's largest program of educational assistance to elementary and secondary schools, providing over $8 billion annually to meet the needs of disadvantaged students. Title I now serves more than 11 million students, of whom 30% are Hispanic and 28% are African American. Nearly one in five Title I participants have limited English proficiency, and close to one in ten have disabilities.[4]

The Elementary and Secondary Education Act of 1994, called for a major overhaul of the Title I program. The overhaul was designed to shift the program's focus from remediation and basic skills to high standards and high achievement. Significantly, the new law called on all states to establish standards in the core subjects, to develop and

[4] U.S. Department of Education, *Promising Results, Continuing Challenges: The Final Report of the National Assessment of Title I* (1999).

administer assessments to measure attainment of the standards, and to hold Title I schools and school districts accountable for making adequate progress toward achieving the standards. Other critical components required states and school districts to identify districts and schools in need of improvement and to take corrective action in cases of persistent academic failure. Finally, additional measures enacted in 1994 provided for an expansion of schoolwide programs, for increased targeting of Title I dollars to poor communities, and for states to take steps to improve the capacity of schools to deliver high-quality instruction.

Relevant portions of the 1994 law are appended to this report.

Background on Federal Enforcement and State Compliance

The Citizens' Commission has long advocated that federal officials take seriously their duty to enforce the civil rights laws in education and to ensure that recipients of Title I, and other federal funds targeted to the disadvantaged, do not maintain dual systems of public education based on race or economic circumstances. In its 1999 report, *Title I in Midstream*, the Citizens' Commission was highly critical of the Clinton Administration's enforcement of reforms enacted in 1994 that were designed to shift the focus of the Title I program from remediation in basic skills to high standards and higher achievement for all. *Title I in Midstream* detailed a "massive failure of will and nerve" on the part of federal officials between 1994 and 1998. During this time, the Department of Education resisted taking effective enforcement action against states which, for example:

- Did not comply with federal requirements to adopt performance standards.

- Were slow in identifying low-performing schools and districts and in mapping out plans to take corrective action against those with chronic failure.

- Did not develop plans to include all students in assessment and accountability systems, including disabled students and those with limited English proficiency.

The Citizens' Commission is pleased to report, however, that in the last year of the Clinton Administration, in part as a response to adverse publicity generated by the Commission's reports, the Department of Education actually began to enforce the law. Under new leadership in the Office of Elementary and Secondary Education, the Department issued clear and comprehensive guidance to states on the requirements for final accountability systems.[5] Early on in the process, the Department sent messages to states that full compliance would be expected by the 2000-01 deadline.

Preliminary Review of Final Assessment Plans

In addition to publicly releasing guidance in November 1999, the Office of Elementary and Secondary Education undertook a pilot study of four states' final assessments to identify glitches in state systems and to prepare the staff for a workable review of all 50 states' final

[5] U.S. Department of Education, Peer Reviewer Guidance for Evaluating Evidence of Final Assessments Under Title I of the Elementary and Secondary Education Act (November 1999).

assessment plans.[6] Significantly, the Department found deficiencies in all four states, although it eventually approved Wyoming and Kentucky after those states corrected the problems. As a result of the pilot reviews, the Department also flagged a number of problem areas with respect to state compliance. These included:

- *Inclusion of Limited English Proficient (LEP) Students.*[7] The Department found that three out of four of the states "did not fully meet the requirement to include all students in the assessment system, particularly LEP students." In an April 6, 2000 letter to chief state school officers Assistant Secretary Michael Cohen emphasized his expectation that all states would comply with Title I's unambiguous requirements for full inclusion:

"While we recognize the challenge this may present, our review indicated that meeting this very clear inclusion requirement is not beyond the capacity of state assessment systems."[8]

- *Alignment with Standards.* Although the Department had previously indicated the use of norm-referenced tests as the primary Title I assessment could be problematic because these tests were not criterion referenced, the states included in the pilot review all utilized or proposed to utilize criterion-referenced tests aligned with state standards. Nonetheless, the Department indicated it would carefully evaluate state submissions for evidence of alignment.[9]

Following its pilot review, the Department also issued further guidance on the requirements for full inclusion of LEP and disabled students in state assessments.[10] This guidance made clear that very few exemptions, if any, would be tolerated under the new law, and that LEP and disabled students were entitled to appropriate assessment accommodations. Finally, the guidance affirmed the statutory requirement that LEP students be tested in their native language "if it is the form of assessment most likely to yield valid results."

Federal Review of Title I Final Assessments

Over the course of its last year, the Clinton Administration required all states, pursuant to the 1994 law, to submit detailed plans for final Title I assessments to the Department for review and approval. The deadline for all states was October 1, 2000, although a number of states submitted their plans earlier. Each state's plan was subjected to a peer review process, after which the Department negotiated with the states to correct deficiencies found by the reviewers and the staff. The Department sought to determine whether states were meeting key requirements in current law, e.g., for alignment of assessments with standards, for technical quality, and for inclusion and appropriate assessment of all students (including those with

[6] The states were Kentucky, Illinois, Wyoming and North Carolina.

[7] The terms "limited English proficient (LEP) students" and "English language learners" (ELLs) are used interchangeably in this report.

[8] "States Faulted on Inclusion," Title I Report, April 2000, p. 8.

[9] Id. At 8-9.

[10] U.S. Department of Education, Summary Guidance on the Inclusion Requirements for Title I Final Assessments (April 4, 2000).

disabilities, or limited English proficiency and students attending charter schools).

By January 19, 2001, (the Administration's last day in office) the Department had issued decision letters to 34 states.[11] [See Figure 1.] Significantly, but not surprisingly, the Department found that *only eleven states were in compliance with Title I assessment requirements and safeguards.* It also determined that 20 states had deficiencies serious enough to warrant only "conditional approval" or to compel them to seek a waiver of the spring 2001 deadline for full compliance. Moreover, three states – California, West Virginia and Wisconsin – were so egregiously out of compliance that the Assistant Secretary determined they would need to enter into compliance agreements with the Department in order to keep federal funds flowing to the states. Finally, the Department did not complete its reviews of 16 states, the District of Columbia and Puerto Rico.

The new Administration has not gotten into gear on this process. The Citizens' Commission has found no evidence to date that the Department of Education, since January 20, 2001, a) has acted on any additional states, or b) has taken the enforcement measures specified in the 20 decision letters identifying deficiencies in state plans. [Figure 2] The Citizens' Commission is particularly concerned about the three states identified for compliance agreements.

Accountability Reviews Deferred

Regrettably, the Clinton Administration decided not to review states' accountability systems, including their definitions of "adequate yearly progress," even though the same deadline (the 2000-01 school year) was set for compliance with these provisions. Instead, in October 2000, the Department circulated "Draft Title I Accountability Review Criteria," and told states they would need to submit evidence of their accountability systems by December 1, 2000. Then, the Department changed its mind, perhaps as a result of pressure from the states or perhaps in recognition that the incumbent administration had virtually no prospect of acting on the submissions before it left office. States were informed they would not need to submit their accountability plans until March 1, 2001. In doing this, the Clinton Administration virtually assured that the plans would not be acted upon in time for this spring's administration of state tests.

The only exceptions to this deferral on accountability occurred with respect to states submitting applications for Ed-Flex status. Because the Ed-Flex law requires such states to have approved assessment and accountability systems, the Department reviewed those states' accountability plans. (See discussion, section VII, infra.)

On the following pages, we explain what current Title I law requires and why each of these provisions is important for civil rights reasons. Then we provide specific examples of how some of the states listed above have failed to meet their obligations. All references are to decision letters, peer review reports and other public records obtained by the Citizens' Commission from the Department of Education.[12]

[11] Memorandum from Assistant Secretary Michael Cohen to Chief State School Officers, Jan. 19, 2001.

[12] The Department's guidance, memoranda and decision letters on state Title I assessment plans are available at the Department's website, www.ed.gov.

Figure 1

Federal Action on State Title I Assessment Plans (As of 1-19-01)

Decision	Number of States	States
Full Approval	11 States	Delaware, Indiana, Kansas, Louisiana, Maryland, Massachusetts, Pennsylvania, Rhode Island, Vermont, Virginia, Wyoming
Conditional Approval (Full approval expected by Spring 2001)	6 States	Kentucky, Missouri, North Carolina, Oregon, Texas, Washington
Timeline Waiver	14 States	Colorado, Connecticut, Georgia, Hawaii, Maine, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, South Carolina, South Dakota
Compliance Agreement	3 States	California, West Virginia, Wisconsin
Still Under Review	18 States	Alabama, Alaska, Arizona, Arkansas, District of Columbia, Florida, Idaho, Illinois, Iowa, Michigan, Minnesota, Montana, New Jersey, New Mexico, Oklahoma, Puerto Rico, Tennessee, Utah

Source: U.S. Department of Education, January 19, 2001.

Figure 2

Deficiencies in State Title I Assessment Systems

Requirement	Number of States	States
Inclusion of limited English proficient students	22 States	California, Connecticut, Delaware, Georgia, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Mississippi, North Carolina, North Dakota, Nebraska, New Hampshire, Nevada, Pennsylvania, Rhode Island, South Dakota, Virginia, Wisconsin, West Virginia
Inclusion of students with disabilities	14 States	California, Connecticut, Indiana, Kansas, Missouri, New Hampshire, New York, Oregon, South Carolina, South Dakota, Texas, Vermont, Wisconsin, West Virginia
Disaggregated Reporting	30 States	California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Maryland, Maine, Mississippi, Missouri, New York, North Carolina, North Dakota, Nebraska, New Hampshire, Nevada, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Vermont, Virginia, Wisconsin, West Virginia
Finish Standards-based System	11 States	California, Colorado, Georgia, Hawaii, Mississippi, North Dakota, Nebraska, Nevada, South Carolina, South Dakota, West Virginia

Source: U.S. Department of Education, January 19, 2001

I. PERFORMANCE STANDARDS

What does the law require?

Title I required states, in consultation with parents, educators and others, to have developed content standards by the 1996-97 school year and performance standards by the 1997-98 school year. The law requires these standards in at least reading and math.

Content standards specify what all students should know and be able to do in math, reading and other subjects.[13]

Performance standards describe the different levels of proficiency students demonstrate with respect to the standards. Title I calls for states to set at least three levels of proficiency: advanced, proficient, and partially proficient.

Why are performance standards an important civil rights provision?

Standard-setting, when done right, involves an inclusive, deliberative process in which all stakeholders, including teachers and parents, participate to create a set of expectations around which whole communities can rally. Performance standards spell out what *all* students – regardless of race, background or family circumstances – should know and be able to do at particular times during their educational careers and in each subject. They are based on the Congressional finding that all children are capable of mastering challenging content. Statewide performance standards ensure that high poverty school districts will not set lower standards than other school districts in the state, and guard against tracking and other practices that are based on lower expectations for poor and minority students.

How have the states fallen short of the requirement?

In *Title I in Midstream*, the Commission found that only 17 states had met the requirement to have performance standards in place by the 1997-98 school year. The Final Report of the National Assessment of Title I, issued in December 1999, reported that by 1998 only 22 states had complied. By January 2001, in an updated report, the Department's National Assessment found that only 28 states had approved performance standards. The January report observed that the "development of performance standards is so closely related to the development of final assessments that many states have not met the timeline set forth in the statute."[14]

In decision letters on final assessments, the Department cited several problems. For example:

- The Department wrote to **North Dakota**:

"To meet the requirements for student performance standards, the State

[13] As of January 2001, all states but Iowa had developed content standards, according to the Department of Education's National Assessment of Title I.

[14] The updated report of the National Assessment of Title I, *High Standards for All Students: A Report from the National Assessment f Title I on Progress and Challenges Since the 1994 Reauthorization*, is available at http://www.ed.gov/offices/OUS/PES/finalNATIreport.doc.

must provide evidence that the performance standards have been officially adopted, are challenging and aligned with State content standards, apply to all students, and have been developed with broad-based involvement."

- **Mississippi** was directed to provide evidence of approved performance standards in reading and math.

- In granting a timeline waiver, the Department found **Colorado** needed to complete the setting and passage of performance standards for elementary mathematics and for the 10-12-grade span.

- The Department wrote to **Tennessee**:

"Tennessee did not submit evidence to the Department to demonstrate that student performance standards aligned to content standards are in place. In our conversation with you, your staff indicated that the State has completed some performance standards but has not finalized the standards for all subject areas and grade levels.

"In order to complete our review of this portion of Tennessee's assessment system; please provide us with a complete description of the process and timeline for development of your performance standards, particularly in English/ language arts and mathematics. This should include information on when Tennessee will approve the standards; what the performance levels are; who was involved in their development; how the performance standards are aligned with State content standards; how challenging the performance standards are for all children; and what will be included in the performance standards, such as performance descriptors, cut scores, and exemplars of student work."

II. STANDARDS-BASED CURRICULUM AND ASSESSMENTS

What does the law require?

The National Research Council has observed that of all the changes made to Title I in 1994, "perhaps the most far-reaching changes were in the assessment arena."[15] This is because prior to 1994, states and school districts – driven by federal mandates – relied almost exclusively on norm-referenced tests of basic skills both to evaluate the effectiveness of the program and to select eligible students for services.

The 1994 amendments recognized that norm-referenced tests simply compared students to one another rather than measuring their attainment of standards. The new law sought to stimulate states to create and use assessments that measured the higher-order skills needed to live and work in an increasingly complex society. The expectation of the new law was that assessments would be rich and varied, and would rely less on multiple-choice "fill-in-the-bubble" items. Instead, many advocates (including some states like Maryland and Kentucky that were experimenting with new measures) envisioned state assessment systems that included student writing, constructed responses, portfolios, and other measures.

Section 1111 (reprinted in Appendix A) spells out all the specific requirements for state assessments, including, most

[15] National Research Council, *Testing, Teaching, and Learning*, p. 8 (National Academy of Sciences, 1999).

importantly, that they be aligned with the state's own standards. Other requirements address: grade levels assessed, full inclusion of all students, disaggregation and reporting of results, and valid and reliable uses of the assessment results. Related sections of the law (sections 1114, 1115 and 1119) call on schools to deliver instruction aligned with the standards and to assist individual students who are having difficulty mastering them.

Why is alignment of curriculum and assessment with standards a civil rights concern?

If standards are to mean anything, particularly to children in high poverty schools, then teachers must be trained to teach to them and schools must provide the instructional and other resources needed for all students to master them. In short, the curriculum must to be aligned with the state's official determinations about what students should know and be able to do. Moreover, the state assessments must provide an accurate measure of whether and to what extent schools and districts are succeeding in delivering the standards-based curriculum. Only when all three components of this structure – standards, curriculum and assessment – are aligned with each other will accountability measures and consequences be perceived in the community as fair and equitable.

What is wrong with using norm-referenced tests for Title I purposes?

The Citizens' Commission has identified three major concerns with the use of norm-referenced assessments as a sole or primary measure for Title I accountability:

1. *Norm-referenced tests are not aligned with state standards.* While there may indeed be substantial overlap among items included in these tests and states' own standards, they are not designed to match the varying breadth, emphases, and other dimensions of each state's content and performance standards.

2. *Teachers will teach to the test with the highest stakes.* When tests used for accountability purposes (e.g., for rewards, school improvement or corrective action) are standards-based, teaching can focus comfortably on the standards. When there is a mismatch, however, between what is tested and what is written in standards documents, the test will often trump. As a consequence, teachers and whole schools may resort to "test prep" (e.g., subjecting students to a mind-numbing series of multiple choice and other worksheets) at the expense of a rich and varied curriculum.

3. *The scoring of norm-referenced tests is antithetical to the notion that all children can learn at high levels.* Norm-referenced tests are scored on a bell curve, which compares students only to each other (not to a standard) and always tags half of the test-takers as "below average." Test questions are not based on a determination that they measure attainment of a standard but are based on whether they will result in a bell-curved distribution of scores. Tests are constructed by including or eliminating questions in such a manner that most students will score somewhere in the vast middle of the distribution, with a few outliers at the very high and very low

ends of the achievement spread. In contrast, a standards-based assessment system seeks to measure whether students know and are able to do what the state has determined is important for children of their age and grade in each subject area.

How have the states fallen short of the requirement?

In its review over the past year of states' final assessment plans, the Department withheld full approval both to states that had incomplete assessment systems and to those that had adopted assessments but could not demonstrate that they were aligned with standards.

Incomplete assessments. There are many states whose systems were missing a required element of the standards-based system described in the statute. For example:

- **Colorado's** system, for example has incomplete performance standards for elementary math and for the 10-12-grade span.

- Department officials found that the evidence submitted from **North Dakota** did not clearly indicate whether the state will use its current norm referenced test and authentic skills assessments in English/literature and math, noting that there is "no system fully developed and documented, or assured of annual implementation."

- **Nebraska's** "standards and assessments will not be completed and reviewed until at least the summer 2001, beyond the deadline for meeting Title I requirements."

- **Nevada** has no standards-based assessment component for the middle grades.

- **South Dakota** was asked to submit evidence that it has final standards-based assessment in math and approved performance standards in reading and math.

Mismatch with standards. Perhaps the most important issue the Department grappled with was the use of norm-referenced tests for Title I accountability purposes. While the Department apparently concluded that the use of norm-referenced tests (NRTs) as *one* component of a system using multiple measures could be countenanced, it flatly denied submissions of three states where NRTs were the exclusive measure of adequate progress.

- **California, West Virginia, and Wisconsin** were all deemed not in compliance because of reliance on norm-referenced tests as the sole achievement measure for accountability purposes.

- The Department told **West Virginia** that it had failed "to establish alignment between the SAT-9 and content standards."

- In **Wisconsin**, the Department found:

"The State relies exclusively on the Wisconsin Knowledge and Concepts Exam, which is the *Terra Nova*, for Title I and State accountability purposes. The State's own alignment studies show that the *Terra Nova* addresses only 41.2% to 64.7% of the state's content standards, depending on the subject area and grade level. In addition, a significant number of the standards are assessed by only one

test item, and a number of test items are counted as addressing multiple standards. Consequently, Wisconsin's assessment system does not reflect the breadth and depth of the State's academic standards, and fails to measure one-third to more than one-half of what Wisconsin students are expected to learn. It can not provide parents, teachers and students with valid information on the progress students are making toward meeting state standards."

- The Department wrote to **California**:

"Many of the specific instances of noncompliance discussed below result from California's failure to complete development and implementation of assessments that are aligned to State content and performance standards, and use the results of these tests to hold schools accountable for the performance of all students. Consequently, California can comply with many of these requirements if it follows through on its plan to develop and implement a standards-based assessment in a timely fashion"

- The Department also found that the Comprehensive Test of Basic Skills (CTBS), used in **North Dakota,** provided "useful information on how North Dakota students ...compared to a national sample," but was "not fully aligned" with the state's content standards.

- In contrast, in states including **Missouri** and **Delaware**, the Department approved state assessments that included elements of norm-referenced tests along with other measures.

III. DISAGGREGATION AND PUBLIC REPORTING

What does the law require?

Section 1111(b) (3)(I) of Title I requires that state assessment results be disaggregated at the State, local educational agency, and school level by the following categories: "by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to non-disabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged."

Why is disaggregation an important civil rights provision?

When assessment results and other outcome measures are reported by race, gender and other categories, parents and others have help in determining whether schools, districts and states are providing all children with equal educational opportunities. Often average scores are reported, which mask achievement gaps. When disaggregated scores are reported over time, parents and school administrators can determine which schools are making progress in closing achievement gaps and which ones need to change what they are doing.

How have the states fallen short of the requirement?

Thirty of the thirty-four states reviewed were advised by the Department that their plans for disaggregating assessment results did not

fully satisfy Title I requirements. For example:

- Some states did not include a migrant category. These states included **California, Delaware, Indiana, Kansas, Louisiana, Maryland, New Hampshire, New York, North Carolina, Rhode Island, South Carolina, Vermont, Virginia,** and **Wisconsin**.

- Others did not disaggregate by disabled and non-disabled students including: **Connecticut, Delaware, Georgia, Mississippi, Missouri, North Carolina, Oregon, South Dakota, Vermont, Virginia,** and **Washington**.

- **Colorado, Connecticut, Delaware, Georgia, Indiana, Louisiana, Maine, Maryland, Missouri, Mississippi, New Hampshire, New York, North Carolina, Oregon, South Dakota, Tennessee, Virginia,** and **Washington** did not meet requirements for disaggregating results for economically disadvantaged versus non-economically disadvantaged students.

- States including **Delaware, Kentucky, Maryland, North Carolina,** and **Vermont** did not disaggregate for limited English proficient students.

There were also states whose failures were across-the-board. They were not ready, even after six years of notice, to disaggregate the data as required by the Title I statute and the 1994 amendments.

- **West Virginia** will be disaggregating data for the first time with the 2000-01-test administration.

- The method used by **Nebraska** to "collect individual student data does not readily accommodate the aggregation of data from the school level to the state and district level and disaggregation of student performance information by the six categories required by the Title I statute."

- Peer reviewers found that **Mississippi** had not yet begun to disaggregate by the categories required by Title I.

IV. INCLUSION OF *ALL* STUDENTS IN TITLE I ASSESSMENTS

What does the law require?

Title I requires that all students in the grades being assessed participate in the assessments. Limited English Proficient (LEP) and disabled students must be provided "reasonable adaptations and accommodations." Title I explicitly requires the inclusion of LEP students and requires that such students be assessed " to the extent practicable, in the language and form most likely to yield accurate and reliable information on what they know and can do in subjects other than English." As the Department has construed the law, "the only category of students who may be exempted from testing are students who have not attended schools in the local education agency for a full academic year." In such cases, the students must still be tested but their scores are not to be used in measuring the progress of individual schools.

Why is full inclusion an important civil rights provision?

Since states owe an obligation to all students, including those who are

learning English and those who are disabled, it is important that all be included in assessments.

Research published by the Harvard Civil Rights Project underscored the importance of full inclusion:

"One benefit of an all-inclusive assessment system is that it gives us a more accurate picture of the status of the educational system. When any group of students is systematically excluded from the measurement system, we have a biased picture of education, particularly if the group excluded tends to be low-performing students."[16]

Moreover, there is real danger that students who are exempted or excused from assessments will not get the attention and services they need, because nobody is accountable for their progress.

How have the states fallen short of the requirement?

In their evaluation of final assessments, the Department determined that 22 states did not properly include limited English proficient students and fourteen states did not properly include students with disabilities in their assessment systems.

Inclusion of Limited English Proficient Students

- In excluding 58% of its LEP students, the Department found **Nevada**, was "effectively removing these students from measures of school progress."

- In **North Carolina**, for example 40-46% of limited English proficient (LEP) students in grades three through eight were exempted from the state's end of grade exams. The Department described this exclusion as "excessive."

- Similarly, **Wisconsin** also excluded 40% of its LEP students in each grade tested in the Wisconsin Knowledge and Concepts Exam.

- **California** has excluded more than 90,000 LEP and disabled students from their current assessment system.[17]

- In **Maine**, the Department noted that "a proportion of the students with disabilities and LEP population in the state currently do not appear to be addressed." Department officials were unable to determine statewide participation rates for LEP and disabled students in Maine.

- The Department, however, congratulated **Texas** for changing and improving its policies for inclusion of LEP students.

Accommodations and Native Language Assessment

A number of states provided incomplete or insufficient evidence that appropriate accommodations would be provided to LEP and disabled students. These states included **California** and **Nevada.** In the case of **Kansas**, which indicated plans to offer accommodations,

[16] M. Thurlow and K. Liu, "State and District Assessments as an Avenue to Equity and Excellence for English Language Learners with Disabilities." (University of Minnesota, Draft, October 2000).

[17] The Department also cited California for excluding over 900,000 students from its accountability system. Some students were excluded because their test scores were invalid, others because they were exempt or they attended small schools or charter schools.

the peer reviewers inquired whether the state had "investigated the technical quality of the accommodated scores." It was unclear from the file and the decision letter, however, whether the question was ever satisfactorily answered.

Although the Department's guidance was unequivocal in informing states, peer reviewers and others of the requirement to test English language learners "in the language and form most likely to yield accurate information" about their knowledge and skills, the Department's decision letters generally did not emphasize this requirement. Most were silent on the question. Exceptions include:

- **Kentucky**. The Department noted that: "demographic changes in Kentucky may warrant changes in the assessment system. If the limited English proficient population (LEP) increases, you may need to reexamine the manner in which LEP students are assessed, particularly the practicability of assessing those students in their native language in order to best determine what they know and can do."

- **California** (which enrolls approximately 40% of the nation's students with limited English proficiency, more than any other state). The Department found that the state met neither the requirements for native language assessment nor those for accommodations.

Inclusion of students with disabilities

- **Texas** failed to include *half* of its disabled students in its assessment system, prompting the Department's determination that the "rate of exclusion is excessive." In its 12/15/00 decision letter the Department indicated:

"**Texas** must develop a plan to increase the number of students with disabilities included in the TAAS assessments at all tested grade levels. Data provided by Texas for school year 1999-2000 indicates that approximately 50% of the students with disabilities have been exempted from TAAS for grades 3-8 and 10 by their local admission, review, and dismissal (ARD) committees. This rate of exclusion is excessive. Section 1111(b)(3)(G) of the Title I statute makes clear the only [exemptions permitted are for] students who have not attended schools in the local educational agency for a full academic year. It should also be noted that the role of IEP teams is to determine how a student will participate in State and district-wide assessments not whether they will participate. States with approved assessment systems include approximately 80-90% of students with disabilities in their regular assessment system with or without accommodations. The other 10-20% of students with disabilities are assessed using an alternate assessment as required by IDEA."

- **Nevada** excluded 43% its disabled students from their assessments.

- The exclusion rate in **West Virginia** was even more egregious with 64% of disabled students excluded, while no evidence was submitted to the department regarding the number of LEP students excluded.

V. ALTERNATE & ALTERNATIVE ASSESSMENTS

Several state plans provided for alternate or alternative assessments, generally for disabled students.

- In its decision letter to **Missouri**, the Department clarified some of the requirements for such assessments under Title I:

"**Missouri** must include results for students who participate in the alternate assessment, as well as the number of students exempted from testing, if any, in State, district, and school performance reports. To the extent statistically feasible, these results and exemptions must be disaggregated by the categories required by Title I."

- Similarly, the Department informed **Maryland** that "results for students who participate in alternate assessments must be reported and included in the State's system for measuring school progress."

- The Department also informed **New York, North Carolina** and others that they would need to report results of alternate assessment and include the results in measures of school progress.

Some states are experimenting with permitting low-achieving students to take below-grade level assessments. The Department concluded that such a practice, whatever its utility may be at the local level, violates requirements in federal law designed to ensure that all students are taught to high standards. The Department wrote to **Texas** officials:

"**Texas** must explain how the results from the alternative and alternate assessments will be reported and included in the standards-based measures for school accountability for the 2000-2001 test administration. Based on Texas' *Decision-making Process for the Texas Assessment Programs (grades 3-8)* it appears that the alternative assessment is administered to students receiving instruction below grade level. If so, while this assessment may provide useful individual performance data, the results may not be consistent with grade-level standards. To meet Title I requirements, scores on tests must either be reported by grade appropriate performance standards or the student is counted as not tested. In addition, Texas must confirm that the results for all students, including those students taking the alternate assessment, will be publicly reported and included in measures of school progress for the 2000-2001 test administration."

VI. HIGH SCHOOL ASSESSMENTS

Although the vast majority of Title I students are enrolled in the lower grades, changes in the school eligibility rules in 1994 mandated that school districts serve all schools over 75% poor. This measure was intended, in part, to address the concern that relatively few high schools were receiving Title I funds. As a result, according to the National Assessment of Title I, 93% of the highest poverty high schools and 29% of all high schools now receive Title I funding.

Yet, the Department's review of state plans revealed that performance standards and assessments at the high school level (sometime between grades 10 through 12) frequently were incomplete and many states showed no prospect of finishing and implementing them this school year. These states included, for example: **California** (high school assessments); **Colorado** (high

school performance standards; technical manual for high school assessment); **Georgia** (high school assessments); **South Carolina** (high school assessment); and **Louisiana** (no state-approved performance standards for 10th grade).

VII. ACCOUNTABILITY AND FLEXIBILITY

As noted earlier, the Department, has taken no steps to review all states' final accountability systems before the expiration of this school year. Several states' accountability plans were reviewed, however, in connection with the "Ed Flex" program, which permits states to issue waivers to schools and districts of certain provisions of federal law they determine stand in the way of reform. In order to be approved by the Department for Ed-Flex status, states must have final assessment and accountability systems that Title I requirements. A preliminary review by the Citizens' Commission raises serious concerns, about Ed-Flex program, including the following:

- **Texas**, an early Ed Flex state, provides a blanket waiver, allowing any Title I school to operate a schoolwide program. Current law allows only those schools whose enrollment is more than 50% poor to do so. Others are required to submit waiver requests to the Department which are evaluated on a case-by-case basis to ensure there is no dilution to services to the students at greatest academic risk.[18]

- **Delaware** was recently granted Ed Flex approval despite weak or vague plans for adequate yearly progress, corrective action and inclusion of LEP students.

- **Pennsylvania** was also approved despite a poor track record on inclusion of LEP students, and a finding by the Department of only "minimal" provisions for technical assistance and corrective action to help low-performing schools.

- Finally, the Department approved **Kansas** for Ed Flex despite a number of troubling defects in the state's plan including: failure to ensure the quality and rigor of locally-adopted assessments, insufficient evidence of full inclusion or LEP and disabled students, and a definition of AYP that codifies low expectations and fails to assure that all students meet proficiency standards.

[18] See Title I in Midstream, Chapter VII.

CONCLUSION

The important issues discussed in this report–the adoption of high standards, the alignment of curriculum and assessment with these standards, reporting systems that inform parents and the community of the progress of children and schools and whether the gap is being closed, the inclusion of all children with appropriate accommodations for English language learners and disabled students–may sound bureaucratic. They are, however, the bread and butter of tangible school improvement for disadvantaged children.

Some progress has been made, in particular, in the last two years, by the federal government in moving the states toward compliance. The challenge now rests with the Bush Administration. Unless the new Administration is prepared to move forward promptly and vigorously to secure compliance, its proposal for federal education reform may be an empty promise for many children.